

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ATLANTIC RECORDING
CORPORATION, *et al.*,

Plaintiffs,

v.

SPINRILLA, LLC, *et al.*,

Defendants.

Civil Action No.
1:17-CV-00431-AT

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO AMEND
EXHIBIT A TO THE AMENDED COMPLAINT

Defendants, through their Opposition to Plaintiffs' Motion for Leave to Amend Exhibit A to the Amended Complaint, try to deflect attention from Defendants' discovery misconduct. But Defendants cannot escape the fact that they hid from discovery thousands of sound recordings that they knew—and have already acknowledged¹—were infringing. Having hidden those infringing recordings until well after the close of discovery, it is the height of hypocrisy for Defendants now to argue that *they* would be prejudiced if Plaintiffs were allowed to amend the

¹ See Dkt. 178-2 (February 5, 2018 Declaration of Scott B. Wilkens) ¶ 3; Dkt. 178-3 (Exhibit 2 to February 5, 2018 Declaration of Scott B. Wilkens).

Complaint to include some of those recordings as works in suit. Defendants caused the delay by hiding the works from discovery, and it is *Plaintiffs* who would be prejudiced if Defendants' discovery misconduct were rewarded.

As has been the case with Defendants' prior filings, there are numerous misrepresentations, distortions of fact and law, and quotations out of context in Defendants' opposition brief. Responding individually to each of these inaccuracies would take pages, and Plaintiffs are painfully aware that the Court is already burdened with reams of paper—which, at bottom, are now simply rehashing many of the same points already made. Accordingly, Plaintiffs submit this short reply principally to refer the Court to their prior briefing—specifically, Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Leave to Amend Exhibit A to the Amended Complaint (Dkt. 195) and Plaintiffs' Opposition to Defendants' Motion to Stay Ruling on Plaintiffs' Motion for Leave to Amend Exhibit A to the Amended Complaint (Dkt. 204).

Those briefs set the record straight on the pertinent facts. This case has *always* been about more than 210 sound recordings, and Defendants have been on notice of that fact since day one. *See* Dkt. 1 (Complaint) ("Plaintiffs have identified over 21,000 sound recordings, the copyrights to which are owned or exclusively controlled by Plaintiffs, that are available on Spinrilla.com ... [a] non-exhaustive,

illustrative sampling ... is attached hereto as Exhibit A.”). Indeed, it defies belief that Defendants could claim to be prejudiced by the addition of those sound recordings that Defendants hid from Plaintiffs’ view, and that Defendants themselves flagged as infringing. Defendants have no one but themselves to blame for the timing of Plaintiffs’ amendment, which is the direct result of Defendants’ failure to produce those flagged sound recordings during discovery.

As the prior briefing on this issue fully demonstrates, fundamental fairness requires that Plaintiffs be permitted to amend Exhibit A to the Amended Complaint. Accordingly, the Court should grant Plaintiffs’ motion.

This 4th day of May 2018.

Respectfully submitted,

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CERTIFICATE OF COUNSEL REGARDING FONT SIZE

I, Kenneth L. Doroshow, an attorney, hereby certify that the foregoing has been prepared with a font size and point selection (Times New Roman, 14 pt.) which is approved by the Court pursuant to Local Rule 5.1(C) and 7.1(D).

/s/ Kenneth L. Doroshow
KENNETH L. DOROSHOW

CERTIFICATE OF SERVICE

I, Kenneth L. Doroshow, an attorney, hereby certify that on this 4th day of May 2018, Plaintiffs' Reply Memorandum in Support of Plaintiffs' Motion for Leave to Amend Exhibit A to the Amended Complaint was electronically filed with the Clerk of Court using the CM/ECF system, which automatically and contemporaneously sends electronic notification and a service copy of this filing to all counsel of record who have appeared in this matter.

/s/ Kenneth L. Doroshow
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